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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

SUBURBAN TELEPHONE CO., a corporation,
Appellant

vs.

THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY, a corporation, et al.,
Appellee

and

MRS. JOE TADLOCK, et al.,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF NEW MEXICO

MOTION TO DISMISS AND BRIEF OF APPELLEES, MRS. JOE TADLOCK, ET AL., IN SUPPORT THEREOF

JULIAN S. ERTZ, AND
OSCAR H. BEASLEY AND MALCOLM G. COLBERG
Attorneys for Mrs. Joe Tadlock, et al., Appellees
457-J Washington, SE
Albuquerque, New Mexico

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Pursuant to Rule 16, Appellees Mrs. Joe Tadlock, et al., move to dismiss the appeal from the Final Judgment of the Supreme Court of the State of New Mexico on the following grounds:

1. The appeal is not within the jurisdiction of the Court because:

A. The appeal is not taken in conformity with the rules of this Court and specifically Rule 15 (1) (d).

B. There is no statutory basis for jurisdiction.

C. The matter has been determined by the Supreme Court of the State of New Mexico and no Federal question is involved.

2. The federal question sought to be reviewed by appellant was not timely or properly raised, properly pursued or expressly passed on in the State Courts of New Mexico.

3. The appeal does not present any substantial federal question.

4. The actions of the Appellant are such that they merely cause delay and form no basis for reversal.

STATEMENT

The Appellees herein are residents of the County of Catron and were permitted to join as intervenors in the suit between the Appellant and Appellee, Mountain States Telephone Company. The intervention was based upon the desire to obtain adequate telephone service in the area around Quemado, New Mexico and further was, in effect, a protest to the methods pursued by Suburban Telephone Company which slipped into the Quemado area in the "stealth of night". Appellees herein agree with the statement of the case, as set forth in the Motion of Mountain States Telephone and Telegraph Company, but also point out to this Court that a hearing was also held by the State Corporation Commission of New Mexico and a determination was made by the Commission in favor of Mountain States Telephone and Telegraph Company.

REASONS FOR DISMISSING THE APPEAL

I. *The Appeal is Not Within The Jurisdiction of This Court.*

A. Appellees, Mrs. Joe Tadlock, et al., adopt the points and references set forth in the Brief of Appellee, Mountain States Telephone and Telegraph Company.

II. *The Alleged Federal Questions Were Not Timely Raised, Properly Pursued, or Expressly Passed Upon.*

A. Appellees, Mrs. Joe Tadlock, et al., adopt the points and references set forth in the Brief of Appellee, Mountain States Telephone and Telegraph Company.

III. *There is No Substantial Federal Question Involved.*

A. Appellees, Mrs. Joe Tadlock, et al., adopt the points and references set forth in the Brief of Appellee, Mountain States Telephone and Telegraph Company.

IV. *The Actions of the Appellant Are Such That They Merely Cause Delay and Are Without Basis.*

Appellants have been, as heretofore stated, before the State Corporation Commission, The State District Court sitting in and for Catron County and the Supreme Court of the State of New Mexico.

As will be seen from a reading of the Transcripts and the Statement of the Case, the question was not one of a Federal nature and further as set forth in Appellant's Brief on Page 8 and

(R 795-6) the main purpose is to obtain large line haul charges against Mountain States Telephone and Telegraph Company, but not for the purpose of service to the community.

Appellee submits that the entire matter has been in turmoil for two and a half years and should be dismissed and denied by this Court.

CONCLUSION

This appeal is not within the jurisdiction of this Court. No new or additional points are presented to this Court that should be passed on by this Court and further this action is submitted for the purposes of delay and there is no adequate basis for the appeal by appellant and it is therefor respectfully submitted that the appeal be dismissed and denied.

JULIAN S. ERTZ, AND
OSCAR H. BEASLEY AND MALCOLM G. COLBERG
Attorneys for Intervenors
457-J Washington, SE
Suite J
Albuquerque, N. M.